

Lacille De Silva v. Ministry of Public Administration and Management

RTICAppeal(In-Person)/135/2017(*Heard as part of the meeting of the Commission on 04.12.2017*)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. MahindaGammanpila
Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. SelvyThiruchandran
Present: Director-General Mr. PiyathissaRanasinghe

Appellant: Mr. Lacille De Silva
Notice Issued to: Mr. J.J. Rathnasiri,Secretary of the Ministry of Public Administration and Management(Designated Officer)

Appearance/ Represented by: Mr. J.J. Rathnasiri,Secretary of the Ministry of PublicAdministration and Management

RTI Request filed on: 27.04.2017
IO responded on:15.06.2017
First Appeal to DO filed on:06.06.2017
DO responded on: N/A
Appeal to RTI Commission filed on:06.07.2017

The Appellant Mr. Lacille De Silva was not present before the Commission.The Designated Officer (DO) Mr. J.J. Rathnasiri, Secretary of the Public Authority (PA) was present.

Brief Background Facts

The Appellant had requested the following information, by request dated 27.04.2017, pertaining to Circular No. 15/1990 by the PA.

- (1) Has the government given appointments against circular No. 15/1990? If so, for what posts were the appointments made?
- (2) For what institutions were these appointments made?

- (3) If appointments were made against circular No. 15/1990, would they not amount to illegal appointments?
- (4) Giving appointments such as laborer and similar jobs based on the minister's list and not adhering to an accepted procedure amounts to a violation of circular No. 15/1990, for which what are the steps that can be taken?
- (5) Why is not circular No. 15/1990 followed properly to enforce order in the public service?

The Information Officer (IO) by letter dated 15.06.2017 had informed the Appellant that proper information cannot be provided as the appellant has requested information of a wide scope and as a particular institution/s in relation to which the 6 items of information are sought has not been clearly mentioned in the information request.

The Appellant had made an appeal to the DO on 06.06.2017. However, upon non-receipt of any response, the Appellant made an appeal to the Commission on 06.07.2017.

The Appellant had been noticed under Rule 20 of the Rules of the Commission gazetted on February 3rd 2017 (Gazette No 2004/66) to be present at the appeal hearing. However, on the day of the hearing, the Appellant was not present before the Commission. It was minuted of record that the Appellant had requested the staff of the Commission to list the appeal soon since he planned to travel overseas. Attempts to contact the Appellant on the date of hearing were not successful. Accordingly, pursuant to Rule 20 (8) of the RTI Commission Rules on Fees and Appeal Procedure gazetted on 03.02.2017 by Gazette No. 2004/66, the Commission decided to take the matter up for consideration in the Appellant's absence.

Reiterating the position of the IO, the DO stated before the Commission that the information requested by the Appellant was broad and vague in nature. He explained to the Commission that the Appellant has neither requested for specific information that falls within the definition of Section 43 of the RTI Act and is in the possession, custody and control of the Public Authority as specified in Section 3 of the Act nor specified a time period in respect of the same.

The PA further stated that the information requested by information request dated 27.04.2017 was not in the possession of the PA. Upon the Commission querying as to why the PA claimed that the information was not its possession, the DO explained that in any event, the authoritative recruitment office (පත්වීම් බලධාරීන්) concerning the information requested by the Appellant was not the PA in respect of the information requested. This was because although public services such as Ministries, Departments etc., which will also fall under this Circular No 15/1990 to which the request of the Appellant relates, are governed by the rules and procedure of the Public Service Commission, other statutory institutions such as Banks, Co-operations, Boards etc. are governed by those of the Management Services. Accordingly, only the recruitment procedures of the Combined Services and the 6 All-Island Services, namely Sri Lanka Administrative Service, Sri

Lanka Accountancy Service, Sri Lanka Planning Service, Sri Lanka Engineering Service, Sri Lanka Scientific Service and Sri Lanka Architecture Service fall within the authority of the PA. It was noted that the request was also too vague and broad for the PA to direct/transfer the same to the attention of the other relevant Public Authorities.

The PA categorically stated on record that in so far as the combined services and 6 all island services were concerned, the answers to the first two questions posed by the Appellant in his information request are collectively in the negative since it has always appointed officers adhering to the procedure set forth by the circular no. 15/1990. The DO also presented a letter dated 29.11.2017, addressed to the Commission and copied to the Appellant, before the Commission stating the same in written format. In the wake of the above answers, the remaining questions asked by the Appellant did not arise.

Order

Section 3 (1) of the Right to Information Act, No 12 of 2016 states;

Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.

The right of the citizen to acquire information from a PA arises only when the PA concerned is in the possession, custody or control of the information requested. Furthermore, Section 24(5)(a) mandates that;

A citizen making a request for information shall:—

(a) provide such details concerning the information requested as is reasonably necessary to enable the information officer to identify the information”

Accordingly, the requested information needs to be specific and clear in order to assist the PA to locate the information. Having considered the instant matter in detail, it is evident that the information requested by the Appellant is not specific and is far too generalized. The PA in question is not in possession of some of the information that falls within such wide scope such as appointments made in State Banks, Co-operations, Boards and so on.

Further the several items of information requested in those respects are too generalized to enable the enforcement of a duty on the part of the PA to transfer to the relevant PAs under and in terms of clause No 06 of RTI Regulation 04 as gazetted on 3rd February 2017 (Gazette No 2004/66).

At the Right to Information Commission of Sri Lanka

The Appellant is advised to rephrase his information requests paying attention to Section 43 read with Section 3 of the Act and to submit it to the relevant Public Authority which is in possession, custody or control.

In the foregoing circumstances, the Commission affirms the decision of the DO.

The Appeal is hereby concluded.

